IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11588 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALI AJGAR ALIBHAI VORA (DODIYA)

Versus

THE COMMISSIONER OF POLICE,

Appearance:

1. Special Civil Application No. 11588 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 15/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Kamlesh kachhavah for ld.

counsel Ms. DR Kachhavah for the petitioner detenu and ld. AGP Ms. Punani.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 07.06.2004 passed by the Commissioner of Police, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that for recording subjective satisfaction, the detaining authority has mainly considered registration of single solitary offence being CR No.973/2004 registered with Prohibition Station (North) on 28.04.2004 for the offences punishable under Sections 66(1)B, 65AE and 81 of The Bombay Prohibition Act. The detenu was arrested on the same day i.e. on 28.04.2004. Over and above this aspect, it is clear that the sponsoring authority had also placed two statements recorded by it as to the activities of the present petitioner detenu on 26.05.2004 i.e. after about 28 days of the registration of the commission of the offence and arrest of the detenu. Said witnesses were produced before the detaining authority on 03.06.2004 i.e. after about 9 days, who have claimed privilege flowing from sec.9(2) of the PASA Act and on the basis of this material, the detaining authority has recorded satisfaction that bootlegging activities of the present petitioner -detenu is detrimental to the maintenance of public order and of public health.

4. The impugned order of detention has been assailed on number of grounds as mentioned in the memo of petition. However, ld. counsel Mr. Kachhavah has he has focussed his arguments mainly on two grounds. The first ground pressed into service by ld. counsel Mr. Kachhavah is that the petitioner has been wrongly branded as "bootlegger" and his activities are dangerous to maintenance of public order, as he was involved in solitary offence under Bombay Prohibition Act. The second ground pressed into service is that as per the settled legal position of the decision of the Apex Court in the case of Sohanlal Surajram Visnoi v/s State of Gujarat & Ors., 2004(2) GLR 1051, the impugned order of detention requires to be quashed as the case the present case is squarely covered by the ratio of the aforesaid decision.

5. I have gone through the above-cited decision. For the sake of convenience, I would like to quote relevant paras 4 & 5 of the said decision:-

> "4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.
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> 5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A. Act and only one offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949. Whereas in Special Civil Application No.825/2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

6. The next ground pressed into service by ld. counsel Mr. Kachhavah for the detenu is that there is a gross delay in passing the order of detention and that would also adversely affect the legality and validity of the order of detention. As referred to above, the only case registered against the detenu is on 28.04.2004 and the impugned order of detention is passed on 07.06.2004. Thus, there is a delay of about 1 month and 10 days. Even sponsoring authority has recorded statements of witnesses on 26.05.2004 i.e. after about 28 days and the same were also verified after a period of about 9 days

and thereafter after about 4 days, order of detention is passed. Thus, there is a delay at every stage and the same has not been explained. Had there been any immediate need to pass preventive detention order, the authorities would have and ought to have acted promptly. So, on this ground of unreasonable and unexplained delay in passing the order of detention, impugned order of detention requires to be quashed and set aside.

7. Before parting, it is pertinent to note that the Court has also considered the fact that the present petitioner is a co-detenu of one Abu @ Murtuza Tailor whose petition being Spl.C.A. No. 7057/2004 challenging the order of detention, came to be allowed by this Court quashing the order of detention passed against him. So, on the ground of parity also, the impugned order passed against the present detenu requires to be quashed and set aside.

8. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 07.06.2004 passed by the Police Commissioner, Surat City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.
Direct Service is permitted.

[C. K.BUCH, J]
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